

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.S, Appellant**

**and**

**U.S. POSTAL SERVICE, SANDY SPRINGS  
CARRIER ANNEX, Sandy Springs, GA,  
Employer**

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**Docket No. 20-1448  
Issued: April 12, 2021**

*Appearances:*

*Paul H. Felser, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 29, 2020 appellant, through counsel, filed a timely appeal from a July 13, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective February 15, 2018 as he no longer had residuals or disability causally related to his accepted employment injury; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals on or after February 15, 2018 due to his accepted employment injury.

## **FACTUAL HISTORY**

On May 10, 2016 appellant, then a 54-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he experienced pain in his feet, right shoulder, hips, and right knee causally related to factors of his federal employment including bending, stooping, twisting and prolonged sitting. He first became aware of his condition on February 20, 2016 and attributed to factors of his federal employment on February 29, 2016. Appellant stopped work on April 21, 2016. OWCP accepted the claim for bursitis of the right shoulder, right knee instability, plantar fascial fibromatosis, low back strain, and bilateral hip bursitis. It paid appellant wage-loss compensation for total disability on the supplemental rolls beginning April 23, 2016 and on the periodic rolls beginning May 28, 2017.

A March 28, 2016 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated moderate acromioclavicular arthropathy. An MRI scan of the hips of even date demonstrated degenerative changes.

In a report dated June 17, 2016, Dr. Jay B. Bender, a Board-certified physiatrist, discussed appellant's history of osteoarthritis of the hips, knees, feet, and hands, bilateral carpal tunnel syndrome, right knee instability, and chronic low back syndrome. He noted that appellant had experienced pain in his low back, knees, feet, and right shoulder performing the duties of his employment. Dr. Bender diagnosed right shoulder bursitis, a tear of the lateral meniscus of the right knee, hip bursitis, bilateral plantar fascial fibromatosis, and lumbar strain. He opined that appellant's employment duties had aggravated his bilateral hips, feet, knees, and right shoulder conditions.

A September 21, 2016 MRI scan of the lumbar spine showed disc desiccation and degeneration without a loss of disc height from L3 to S1, a central annular herniation at L5-S1, and facet arthropathy from L3 to S1 bilaterally. MRI scans of appellant's feet obtained on even date demonstrated degenerative change at the first metatarsophalangeal joint, mild right foot bursitis, and a subchondral cyst.

On October 26, 2016 Dr. Bender provided his review of the MRI scans. He requested that OWCP upgrade the diagnoses to include lumbar intervertebral disc degeneration, lumbar inflammatory spondylopathy, lumbar intervertebral disc displacement, a tear of the right lateral meniscus, unilateral primary osteoarthritis of the right knee, juvenile osteochondrosis of the right tibia and fibula, a right knee subluxation, a left foot contusion, primary osteoarthritis of the left foot and ankle, bursitis of the right ankle and foot, a bone cyst of the right ankle and foot, tarsal tunnel syndrome of the lower limb, and primary osteoarthritis of the right ankle. In an

accompanying report of even date, Dr. Bender listed the same diagnoses and found that appellant could perform sedentary work with restrictions.

Dr. Bender continued to submit progress reports throughout 2017 describing his treatment of appellant and providing the same diagnoses. On January 17, 2017 he found that appellant was disabled from employment. On February 21, 2017 Dr. Bender again requested that OWCP upgrade the diagnoses to include the additional diagnosed conditions.

On March 7, 2017 OWCP referred appellant to Dr. Raju Vanapalli, an orthopedic surgeon, for a second opinion examination to determine the accepted conditions due to the employment injury. It requested that Dr. Vanapalli review the conditions diagnosed by Dr. Bender on February 21, 2017 and specify which should be accepted under the current claim. OWCP indicated that appellant had not complained of an injury to his back.

In a report dated May 4, 2017, Dr. Vanapalli provided his review of appellant's history of injury and medical records. On examination he found full strength and sensation of the upper and lower extremities and no spasms, trigger points, or tenderness in the cervical and lumbar spine. Dr. Vanapalli further found no loss of motion, swelling, warmth, or tenderness of the hips, and no signs of tarsal tunnel syndrome. He opined that appellant's shoulder motion was almost normal with no tenderness at the subacromial or sub-deltoid region or any evidence of bursitis. Dr. Vanapalli further found no right knee instability, a negative McMurray's test, and intact collateral and cruciate ligaments. He related, "Plantar fascial fibromatosis is also secondary to flatfeet which are developmental and not work related." Dr. Vanapalli found that appellant had no objective evidence of a low back strain, noting that he had no spasm, tenderness, trigger points, or motion loss. He indicated that he had found symptom magnification but not malingering. In an accompanying work capacity evaluation (OWCP-5c) form, Dr. Vanapalli advised that appellant could perform modified employment walking up to three hours per day and occasionally lifting up to 50 pounds.

On June 8, 2017 OWCP requested that Dr. Bender address appellant's current employment-related condition and whether appellant could return to his usual or modified employment. It noted that he was treating appellant for a degenerative lumbar condition and requested that he address whether this condition was employment related.

A June 30, 2017 MRI scan of the lumbar spine demonstrated disc desiccation and degeneration without loss of height from L3 to S1, facet arthropathy at L3-4, L4-5, and L5-S1, a central annular disc herniation at L5-S1, and a new disc herniation at L4-5 when compared to the September 21, 2016 MRI scan.

In a July 6, 2017 report, Dr. Bender provided the history of injury and his review of the diagnostic studies and appellant's medical treatment. He again diagnosed additional conditions that he thought should be accepted. Dr. Bender advised that appellant was disabled from employment.

On July 19, 2017 Dr. Bender again requested that appellant's diagnoses be upgraded to include lumbar intervertebral disc degeneration, lumbar inflammatory spondylopathy, lumbar intervertebral disc displacement, a tear of the right lateral meniscus, unilateral primary

osteoarthritis of the right knee, juvenile osteochondrosis of the right tibia and fibula, a right knee subluxation, a left foot contusion, primary osteoarthritis of the left foot and ankle, bursitis of the right ankle and foot, a bone cyst of the right ankle and foot, tarsal tunnel syndrome of the lower limb, and primary osteoarthritis of the right ankle.<sup>3</sup> He advised that, based on his review of appellant's job duties, the medical records, and physical examination, the "work-related activity reasonably caused the injury." Dr. Bender requested that OWCP "add the additional diagnoses to the listed of accepted conditions...."

OWCP determined that a conflict in medical opinion existed between Dr. Vanapalli and Dr. Bender regarding the extent of appellant's disability for employment. It referred appellant to Dr. Warner Wood, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated November 10, 2017, Dr. Wood provided his review of appellant's work history and the medical reports of record, including the results of diagnostic studies. He indicated that the physical findings included tenderness where there were no joints and an inconsistent straight leg raise. Dr. Wood related that the "decreased sensation in the lateral foot on the left, and the slight calf atrophy on the right are not supportive as they are in different legs." He found normal ankle and knee reflexes demonstrating no significant nerve root irritation, an essentially normal examination of the right knee, and normal examination of the right shoulder, bilateral hips, and bilateral feet. Dr. Wood opined that there was no objective evidence of any of the accepted conditions, noting that the objective and subjective findings were minimal. He found that appellant could resume his usual employment without restrictions. Dr. Wood asserted that the objective findings on examination failed to support his subjective complaints and that the changes on diagnostic studies were mild and could be due to aging rather than employment. He opined that appellant should preferably limit lifting to 50 pounds due to his small stature.

On January 11, 2018 OWCP advised appellant of its proposed termination of his wage-loss compensation and medical benefits as the weight of the evidence established that he no longer had any employment-related residuals or disability due to his accepted employment injury. It afforded him 30 day to submit additional evidence or argument if he disagreed with the proposed termination.

By decision dated February 14, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits effective February 15, 2018. It found that the opinion of Dr. Wood represented the special weight of the medical evidence and established that appellant had no further residuals or disability due to his accepted conditions.

In a March 8, 2018 report, Dr. Kevin McCowan, a surgeon, provided the same history of injury and diagnoses as Dr. Bender. He submitted similar reports on May 1 and June 5, 2018, noting that appellant had medically retired.

On June 11, 2018 appellant's counsel requested reconsideration. He asserted that appellant was unable to resume his regular employment due to his right knee, right shoulder, lumbar spine, bilateral feet, and bilateral hip injuries.

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<sup>3</sup> Dr. Bender submitted progress reports dated September 6 and October 2, 2017.

By decision dated July 31, 2018, OWCP denied modification of its February 14, 2018 decision.

In an initial evaluation dated August 27, 2018, Dr. Victor Osisanya, a Board-certified physiatrist, obtained a history of appellant injuring his right shoulder, right knee, bilateral hips, low back, and bilateral feet performing his work duties over time. He provided examination findings and reviewed the results of diagnostic testing. In addition to the accepted conditions, Dr. Osisanya listed as upgraded diagnoses right shoulder osteoarthritis, facet arthropathy, lumbar radiculopathy, lumbar intervertebral disc degeneration and displacement, a lumbar herniated disc with radiculopathy, bilateral osteoarthritis of the hips, a right knee lateral meniscal tear, subluxation, osteoarthritis, and a collateral ligament tear, osteoarthritis of the bilateral ankle and feet, and a right solitary calcaneal cyst. He related:

“In my medical rationale, based on my review of [appellant’s] job duties and responsibilities and my physical examination and review of the records, [he] sustained an occupational injury as a direct result of the prolonged and repetitive standing and walking on the hard concrete floors of the employing establishment which led to his multiple right knee injuries (those accepted and those submitted for upgrade) and his bilateral foot/ankle injuries both accepted and those submitted for upgrade.”

Dr. Osisanya further found that appellant’s job duties accelerated his right shoulder, lumbar, and bilateral hip conditions, both those already accepted, and those submitted for upgrade.

An MRI scan of the right knee obtained on August 28, 2018 demonstrated a complex lateral meniscal tear with degenerative changes to the lateral compartment. An MRI scan of the lumbar spine of even date demonstrated degenerative changes.

Appellant submitted progress reports from Dr. McCowan dated August 2018 describing appellant’s treatment.

On October 1, 2018 Dr. Osisanya provided the same diagnoses as in his August 2018 report. He indicated that he had reviewed imaging studies which “confirmed again all above mentioned diagnoses both accepted and those being submitted for upgrade....”<sup>4</sup>

On January 28, 2019 appellant requested reconsideration.

By decision dated April 26, 2019, OWCP denied modification of its July 31, 2019 decision.

Thereafter, OWCP received a November 3, 2017 determination by the Office of Personnel Management that appellant was disabled due to bilateral hip osteoarthritis, flat feet, and benign prostatic hyperplasia. It further received progress reports dated January 30, March 5, April 22, and May 29, 2019 from Dr. Osisanya containing the same diagnoses and upgraded diagnoses as in his previous reports.

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<sup>4</sup> Dr. Osisanya provided a similar reports on November 16 and December 11, 2018 and February 5, 2019.

In a report dated March 18, 2020, Dr. Charles D. Fowler, a Board-certified internist, found that appellant had a history of a repetitive motion injury to his right shoulder from his occupation. He indicated that appellant had continued right shoulder pain, stiffness, loss of motion, laxity, and instability. Dr. Fowler recommended continued physical therapy and advised that the condition was due to appellant's employment.

On April 24, 2020 appellant, through counsel, requested reconsideration. Counsel noted that Dr. Vanapalli had found that appellant could work with restrictions, and that the conflict arose regarding appellant's work capacity rather than continued employment-related residuals. He asserted that the opinion of Dr. Wood was conclusory, lacked rationale, and questioned the relationship of the accepted conditions. Counsel further contended that Dr. Wood had failed to provide his review of all the medical evidence. He maintained that the statement of accepted facts did not contain a description of the medical treatment and diagnostic testing that appellant had received since his injury. Counsel maintained that appellant had sustained additional employment-related conditions.

On June 15, 2020 Dr. Fowler advised that appellant had a history of pain and osteoarthritis of the bilateral hips due to repetitive motion from appellant's employment. He asserted that appellant required additional physical therapy for appellant's condition, which he advised was "clearly work related."

By decision dated July 13, 2020, OWCP denied modification of its April 26, 2019 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>5</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>6</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>8</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>9</sup>

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<sup>5</sup> *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

<sup>6</sup> *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

<sup>7</sup> *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

<sup>8</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>9</sup> *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>10</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 15, 2018.

In a report dated October 26, 2016, Dr. Bender reviewed the MRI scans and requested that OWCP upgrade the accepted conditions to include lumbar intervertebral disc degeneration, lumbar inflammatory spondylopathy, lumbar intervertebral disc displacement, a tear of the right lateral meniscus, unilateral primary osteoarthritis of the right knee, juvenile osteochondrosis of the right tibia and fibula, a right knee subluxation, a left foot contusion, primary osteoarthritis of the left foot and ankle, bursitis of the right ankle and foot, a bone cyst of the right ankle and foot, tarsal tunnel syndrome of the lower limb, and primary osteoarthritis of the right ankle. In an accompanying report of even date, he provided the same diagnoses and found that appellant could perform sedentary work with restrictions. On January 17, 2017 Dr. Bender opined that appellant was disabled from employment.

OWCP referred appellant to Dr. Vanapalli for a second opinion examination. It requested that he review Dr. Bender's report and identify the employment-related conditions. OWCP further indicated that appellant had not complained of an injury to his back; however, it accepted low back strain as employment related.

On May 4, 2017 Dr. Vanapalli diagnosed as employment related bursitis of the right shoulder and bilateral hips, instability of the right knee, low back strain, and plantar fibromatosis. He found that appellant had no objective evidence of bursitis, tarsal tunnel syndrome, a right knee condition, low back strain, or a hip condition. Dr. Vanapalli further opined that his plantar fascial fibromatosis resulted from flat feet and were unrelated to employment. He provided work restrictions. Dr. Vanapalli, however, did not directly address whether the acceptance of appellant's claim should be expanded to include the additional conditions diagnosed by Dr. Bender.

OWCP determined that a conflict in medical opinion arose between Dr. Vanapalli, an OWCP referral physician, and Dr. Bender, appellant's physician, regarding appellant's current employment-related disability. It referred appellant to Dr. Wood for an impartial medical examination and, based on Dr. Wood's opinion, terminated appellant's compensation and entitlement to medical treatment. OWCP did not, however, resolve the issue of claim expansion prior to terminating appellant's compensation benefits.

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<sup>10</sup> 5 U.S.C. § 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>11</sup> *D.B.*, Docket No. 19-0663 (issued August 27, 2020).

Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.<sup>12</sup> It failed to fully develop the issue of claim expansion to determine whether it should expand acceptance of the claim to include the additional conditions diagnosed by Dr. Bender and whether, if established, these conditions resulted in continuing disability from employment or the need for medical treatment.<sup>13</sup>

For the above-stated reasons, OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.<sup>14</sup>

### **CONCLUSION**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 15, 2018.<sup>15</sup>

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<sup>12</sup> See *R.B.*, Docket No. 20-0109 (issued June 25, 2020); *B.W.*, Docket No. 19-0965 (issued December 3, 2019).

<sup>13</sup> See *B.W.*, Docket No. 20-1033 (issued November 30, 2020); *J.T.*, Docket No. 19-1723 (issued August 24, 2020).

<sup>14</sup> *J.T.*, *id.*

<sup>15</sup> In view of the Board's disposition of issue 1, issue 2 is moot.



**ORDER**

**IT IS HEREBY ORDERED THAT** the July 13, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 12, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board